

M I L L E R & V A N E A T O N

P. L. L. C.

MATTHEW C. AMES
KENNETH A. BRUNETTI*
FREDERICK E. ELLROD III
MARCI L. FRISCHKORN
GAIL A. KARISH*
WILLIAM L. LOWERY
NICHOLAS P. MILLER
MATTHEW K. SCHETTENHELM
JOSEPH VAN EATON

*Admitted to Practice in
California Only

1155 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20036-4320
TELEPHONE (202) 785-0600
FAX (202) 785-1234

MILLER & VAN EATON, L.L.P.
400 MONTGOMERY STREET
SUITE 501
SAN FRANCISCO, CALIFORNIA 94104-1215
TELEPHONE (415) 477-3650
FAX (415) 477-3652

WWW.MILLERVANEATON.COM

OF COUNSEL:

JAMES R. HOBSON
GERARD L. LEDERER
WILLIAM R. MALONE
JOHN F. NOBLE
NANNETTE M. WINTER†

†Admitted to Practice in
New Mexico Only

December 6, 2006

Marlene H. Dortsch
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Presentation in MB Docket No. 05-311, MB Docket No. 06-189

Dear Ms. Dortsch:

Pursuant to 47 C.F.R. § 1.1206, I submit this original and three copies of a letter disclosing an oral and written *ex parte* presentation in the above-captioned proceedings. On December 6, 2006, on behalf of Anne Arundel County, Maryland, the following persons met with Marcia Glauberman, Rosemary Harold, Anne Levine, Mary Beth Murphy, Brendan Murray, John Norton, Holly Saurer, and Royce Sherlock:

| | |
|-------------------------|-------------------------------|
| John Lyons | Anne Arundel County, Maryland |
| Frederick E. Ellrod III | Miller & Van Eaton, P.L.L.C. |

During this meeting, the participants discussed issues relating to local cable franchising as summarized in the attached document, which was distributed at the meeting.

MILLER & VAN EATON, P.L.L.C.

- 2 -

Please contact the undersigned with any questions.

Very truly yours,

MILLER & VAN EATON, P.L.L.C.

By:

A handwritten signature in cursive script, reading "Frederick E. Ellrod III". The signature is written in dark ink and includes a stylized flourish at the end.

Frederick E. Ellrod III

cc: John Lyons
Marcia Glauberman
Rosemary Harold
Anne Levine
Mary Beth Murphy
Brendan Murray
John Norton
Holly Saurer
Royce Sherlock

M I L L E R & V A N E A T O N

P. L. L. C.

MATTHEW C. AMES
KENNETH A. BRUNETTI*
FREDERICK E. ELLROD III
MARCI L. FRISCHKORN
GAIL A. KARISH*
WILLIAM L. LOWERY
NICHOLAS P. MILLER
MATTHEW K. SCHETTENHELM
JOSEPH VAN EATON

*Admitted to Practice in
California Only

1155 CONNECTICUT AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20036-4320
TELEPHONE (202) 785-0600
FAX (202) 785-1234

MILLER & VAN EATON, L.L.P.
400 MONTGOMERY STREET
SUITE 501
SAN FRANCISCO, CALIFORNIA 94104-1215
TELEPHONE (415) 477-3650
FAX (415) 477-3652

WWW.MILLERVANEATON.COM

OF COUNSEL:

JAMES R. HOBSON
GERARD L. LEDERER
WILLIAM R. MALONE
JOHN F. NOBLE
NANNETTE M. WINTER†

†Admitted to Practice in
New Mexico Only

Franchising Rulemaking, MB Docket No. 05-311
December 6, 2006

- **There is *no* “franchise problem” to fix.**
 - Verizon is getting its franchises. *See* Anne Arundel, Montgomery County, Fairfax County, Tampa, New Jersey, etc.
 - Each of those franchises treat the incumbent fairly as well.
 - There is no evidence Verizon could have rolled out service any faster.
 - AT&T is not providing much video service even with state-wide franchises in Texas, Indiana, Kansas and California.
- **Local franchising does not delay entry.**
 - Local governments want competition.
 - Local communities have every incentive to negotiate quickly.
 - If the Bells were willing to accept normal cable franchises, they would have them in short order.
 - It is the Bells’ persistent demands for special treatment that delay negotiations.
 - The Bells waste time haggling for better terms for themselves, then blame the delays on local communities.
 - Even so, they are gaining franchises faster than they can build them out.
 - Example: In 2006, Anne Arundel County reached a franchise agreement with Verizon and also executed renewal agreements with Comcast and Millennium, adding a third competitor to the market in the County.
- **There is no evidence in the record to support the claim that local franchising delays entry.**
 - Bell company allegations against unnamed communities are improper; they deny their targets an opportunity to respond and correct the record.

- Where the Bells' targets can be identified, the accusations are incorrect or misleading.
- Example: Accusation against Anne Arundel County (AT&T Exh. C, #164)
 - The renewal needs assessment identifies *all* of a community's needs and interests, then the community establishes priorities among those needs.
 - Negotiations are based on the community's priorities, not on the "raw material" of the needs assessment alone. No negotiated result satisfies all expressed needs.
 - The County's actual negotiating position in 2006, agreed to by Verizon, was for PEG capital grants of \$0.98 per subscriber per month – the same amount already being itemized by Comcast on subscriber bills.
 - This equated to approximately 1.65% of gross revenues from cable service – a pittance compared to the 40 IRR industry standard profitability of cable systems and the value of the public resources they use as economic inputs.
 - AT&T's statements – based on newspaper articles rather than actual source documents – misrepresent the County's initial evaluation of its needs and interests as if these were demands.
 - PEG capital support is expressly permitted by 47 U.S.C. §§ 542(g)(2)(C) and 544(b). It is the only way to achieve non-commercial speech on these systems.
- The most recent Verizon filing continues to attack anonymously the very franchise terms it agreed to in Montgomery County, such as 3% PEG support, reasonable build-out requirements.
- **Commission regulation of local franchise negotiations will not accelerate entry.**
 - Bell deployment is a function of economics and wire center layout, not franchising.
 - State laws allowing "no-frills" Bell entry have not produced significant new deployment.
- **An attempt by the Commission to regulate local franchise negotiations is illegal.**
 - The Commission lacks authority to regulate cable franchise negotiations.
 - The Commission cannot issue a franchise covering someone else's property.
 - The Commission cannot compel a state or local government to issue a franchise.
 - The Commission has no expertise in franchise negotiations.
 - The record supports local franchising and does not support federal regulation of local franchising.

- **The Cable Act explicitly authorizes local control of negotiations.**
 - Institutional networks may be required under 47 U.S.C. §§ 544(b) and 531(b).
 - Institutional networks represent accelerated deployment of advanced communications systems for the common good. Cable operators may build on I-Nets to support their own expansion of service to commercial customers.
 - Locally customized build-out requirements under 47 U.S.C. § 552(a)(2), negotiated between local communities and cable operators, assist in extending service to the maximum number of citizens.